

interconnection established under an interim rate shall be capped under such rate. Any such arrangements may only be adjusted downward. Of course, any downward adjustment will be retroactive to the date the interconnection was established or the UNE was placed in service. The Commission concludes that this procedure will actually encourage early entry into the local market because potential competitors will want to take the largest possible advantage of the capped interim rates.

E. Service Quality Issues are Appropriately Addressed as Enforcement Issues and Not as Part of BST's Compliance With the Checklist.

Sprint's witness Melissa Closz and ACSI witness Jim Falvey complained about service problems allegedly encountered by these CLECs companies in other states. It is worth noting that there is no evidence in this record of any service problems in South Carolina. The Commission further observes that complaints do not rise to the level of proof. ACSI has filed a formal complaint with the FCC and Georgia Public Service Commission and no ruling has been issued in those proceedings. Ms. Closz conceded that Sprint has not even filed a complaint or otherwise sought legal redress for the alleged problems she noted in her testimony.

Even if there were actual proof in this record of inferior service by BST, this proof would be irrelevant to BST's compliance with its duty under Sections 251, 252(d) and the competitive checklist to make functions, capabilities and services available to CLECs. No one disputes that the issue of

service quality is an extremely important one; it simply has no place in this proceeding. Congress recognized that enforcement of the RBOC's obligations under the Act was an important issue and addressed this concern in Section 271. Immediately following the provisions in the Act dealing with the FCC's standard of review, including the express prohibition against Commission expansion of the competitive checklist (Section 271(d)(4)), Congress provided for enforcement of the RBOC's continuing obligations under Section 251, including an expedited complaint process and severe penalty provisions. Section 271(d)(6) provides:

(A) COMMISSION AUTHORITY.--If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing --

- (i) issue an order to such company to correct the deficiency;
- (ii) impose a penalty on such company pursuant to title V; or
- iii) suspend or revoke such approval.

(b) RECEIPT AND REVIEW OF COMPLAINTS.--The Commission shall establish procedures for the review of complaints concerning failures by Bell Operating companies to meet conditions required for approval under paragraph (3). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

47 U.S.C. § 271(d)(6). The FCC complaint processes and penalties are, of course, in addition to remedies available under federal and state antitrust laws (including injunctive awards and awards

of treble damages and attorneys fees), as well as recourse before the state public service commissions.

F. The Public Interest Favors Allowing BSLD to Enter the InterLATA Long Distance Market in South Carolina Market in South Carolina.

Before authorizing BOC entry into the in-region interLATA market, the FCC also determine that "the requested authorization is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). Although the Act does not oblige this Commission to render a recommendation in this respect, the Commission notes that in a Nov. 20, 1996 speech to NARUC, then-FCC Chairman Reed Hundt stated that State commissions will have a role in the FCC's public interest determination. Having carefully considered the positions of the parties on this issue, this Commission will also advise the FCC that BST's entry into the interLATA market in South Carolina is in the public interest.

BSLD's entry into the interLATA market in South Carolina would lead to increased long distance competition and more choices for consumers, which is in the public interest. Dr. Taylor testified that South Carolina customers could see the market price for long distance services decrease by 25% within one year of BSLD entry. Dr. Taylor computed savings to be a minimum of \$9.00 and a maximum of \$14.00 increase in the consumer surplus of South Carolina customers. Dr. Raimondi estimated that a 25% reduction in the market price of long distance service in

South Carolina over a five-year period could lead to the creation of almost 13,000 jobs and an increase of almost \$1.2 billion in gross state product. These results were unrefuted by the Intervenor.

Although Section 271's public interest inquiry is not specifically defined, the Senate Committee that first drafted this standard explained that "the public interest, convenience, and necessity standard is the bedrock of the 1934 [Communications] Act, and the Committee does not change the underlying premise through the amendments contained in this bill." S. Rep. No. 23, 104th Cong., 1st Sess. 44 (1995). The FCC has long interpreted the Communications Act's public interest standard as establishing a strong presumption in favor of new entry and the provision of new technologies, services, and products. See, Washington Utilities & Trans. Comm'n v. FCC, 513 F.2d 1142, 1155 & 1168 (9th Cir. 1975); Hawaiian Tel. Co. v. FCC, 498 F.2d 771 (D.C. Cir. 1974); MTS-WATS Market Structure Inquiry, 81 FCC 2d 177, 200 (1980).

BSLD will be a new entrant into the South Carolina long distance market, and its entry will require that BSLD introduce new services and products in order to compete successfully against the incumbent long distance carriers. To overcome the long-standing presumption in favor of new entry, the opponents of BSLD's request for interLATA authority in South Carolina must provide a detailed, factual showing that competitive harm is

likely to result from such entry, despite the FCC's and this Commission's regulation of BSLD's actions in both the local and long distance markets. Intervenors in this proceeding have failed to make such a showing.

In apparent recognition of the benefits of BSLD's entry into long distance, many of the Intervenors tried to shift the public interest inquiry to the local exchange market, alleging that competition in the local market will be jeopardized if BST is permitted to compete for long distance customers "prematurely." For example, Mr. Wood, sponsored by AT&T and MCI, testified that some sort of "effective competition" test must exist in wire centers across South Carolina before long distance entry is in the public interest. In fact, to adopt these proposed standards would be an illegal addition to the checklist requirements. The Intervenors attempt to justify this requirement by arguing that, otherwise, BST will cease complying with its statutory obligations to keep its local market open once long distance authority is granted and engage in various hypothetical "bad acts" that state and federal regulatory authorities will be powerless to prevent. Congress's debates concerning BOC entry into long distance underscore the existence of an open local market -- not the existence of some level of local competition -- as the key to unlocking the long distance business to BOC competition. Intervenors would render Congress's local market

regulatory scheme and the roles of the FCC and state commissions superfluous.

Even if Congress had not expressly prohibited doing what Intervenor seek to do in this proceeding--adding some sort of "effective competition" test to Section 271--such a test would not benefit the public, because the Commission finds that BSLD's entry into long distance will have no adverse affect on local competition. Intervenor's contention that BSLD's long distance entry should be delayed until "effective competition" emerges in wire centers across South Carolina is based on the assertion that without the "carrot" of long distance before it, BST will ignore its statutory and contractual obligations to keep its local market open. The Intervenor's purported concern that, upon receiving authority to enter the long distance market, BST can and will ignore the checklist, as well as Sections 251 and 252, presupposes that regulators (including this Commission) will be powerless to doing anything about it.

This argument is seriously flawed. First, Intervenor's argument ignores the fact that the incentives created by Section 271 to open the local exchange are continuing. As Mr. Varner testified, BSLD's provision of long distance service is contingent on continued compliance with all the provisions of Section 271, including the competitive checklist. As BSLD's ability to provide long distance service becomes more important in meeting customer needs, as is likely, it would be illogical

for BST to create any opportunity for a CLEC to challenge BSLD's legal ability to provide such service based on its failure to comply with the checklist. Thus, BST's incentive to continue to comply with the checklist is likely to increase over time, not decrease.

Second, just as BSLD's provision of long distance service will not diminish its obligations under the checklist, it also will not diminish its obligations under Sections 251 and 252 of the Act, South Carolina law, FCC and Commission regulations and its binding interconnection agreements. As Mr. Varner observed, these legal obligations and safeguards do not go away once interLATA entry is granted.

In fact, Mr. Varner further stated that long distance entry will invoke additional safeguards that affect the local market under Section 272. Section 272 contains safeguards that, among others, essentially prohibit BST from discriminating in favor of its long distance affiliate. Thus, Section 272 requires Bell companies to "treat all other entities in the same manner as they treat their [long distance] affiliates, and [to] provide and procure goods, services, facilities and information to and from those other entities under the same terms, conditions and rates." See, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC DKT No. 96-149, at ¶¶ 198, 202 (rel. Dec. 24, 1996). The FCC believes that "sufficient mechanisms ... exist within the 1996

Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements."
Id. at ¶ 321. (emphasis added).

Moreover, as explained by Dr. Taylor, BOCs have participated in markets adjacent to the local exchange, including long distance markets, without competitive harm. For example, BOCs compete with unaffiliated providers of cellular service that depend on local market interconnection for the success of their service. Further, this Commission takes note that substantial areas of South Carolina are served by ILECs which provide both local and long distance services. There have never been allegations that any of the customers of these companies or their long distance competitors have been subjected to any acts of competitive harm.

Delaying BSLD's entry into long distance until the intervenors are satisfied that "effective competition" exists in the local market will only serve to delay the benefits of vigorous long distance and local competition. The entities with the financial and marketing resources to provide effective local competition are the same IXC's that have a direct financial interest in delaying BSLD's competing in their long distance market.

The Commission believes that local competition may speed up considerably upon the lowering of the barriers to BSLD competing for long distance business. Lowering this barrier will create

real incentives for the major IXCs to enter the local market rapidly in South Carolina, because they will no longer be able to pursue other opportunities secure in the knowledge that BSLD cannot invade their market until they build substantial local facilities. Since the intervenors have not established any plan to compete for both residence and business customers in South Carolina, we conclude that this decision is the last avenue open to this Commission to encourage local competition as well as long distance competition. Thus, this decision will also foster real investment by AT&T, MCI, and others in the local market in South Carolina. Allowing BSLD to provide long distance service to South Carolina consumers is in the public interest since it would accomplish Congress's objective of fostering competition in all telecommunications markets.

The Commission must address one procedural matter regarding evidence offered at the hearing. At the conclusion of its case, BellSouth moved to introduce 87 binders of information regarding BellSouth's compliance with the 14-point competitive checklist of the Act, as part of Hearing Exhibit 12. Counsel for AT&T, MCI and Sprint opposed the introduction of the binders, arguing that BellSouth had not submitted the information in support of its application or relied on the information during its case. BellSouth countered that the information had been supplied during the course of discovery in this Docket and was intended to complete the present record. The Commission finds that

introduction of the 87 binders would not be appropriate. As the applicant for in-region long distance service, BellSouth bears the burden under the Act of presenting all relevant evidence to allow the Commission and opposing parties to evaluate its application. BellSouth did not include the material as part of its application to the Commission, and did not use the binders to support the testimony of its witnesses. Accordingly, the Commission declines to accept the 87 binders into evidence.

IT IS THEREFORE ORDERED THAT:

1. BST's Statement of Generally Available Terms and Conditions filed herein shall be modified to incorporate the following language: "The Statement shall be subject to revision to the extent necessary to comply with any final legislative, regulatory or judicial orders or rules that affect the rights and obligations created by the Statement."

2. BellSouth's Statement of Generally Available Terms and Conditions filed herein shall be modified to provide that any local interconnection established or UNE placed in service prior to the rate true-up shall be capped at the interim rate. The rate of each such interconnection arrangement or UNE may only be adjusted downward as a result of the true-up process. Any downward adjustment for an interconnection arrangement or UNE in service prior to the true-up shall be adjusted retroactively to

the date such UNE was placed in service or the date such interconnection arrangement was established.

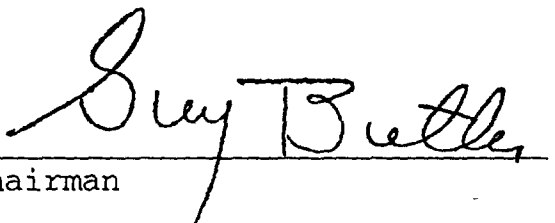
3. The Commission approves BST's Statement of Generally Available Terms and Conditions, as modified above, under Section 252(f) of the Act. BST shall file ten (10) copies of its modified SGAT with the Commission within seven (7) days of receipt of this Order.

4. BST's Statement satisfies the 14-point competitive checklist in 47 U.S.C. § 271(c)(2)(B).


5. The Commission finds that BSLD's entry into the interLATA long distance market in South Carolina is in the public interest.

6. This Order shall remain in full force and effect until further other Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)